

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Edward Berthiaume

v.

Case No. 09-cv-221-PB

Beryl Cohen, et al.

O R D E R

Howard Kleinman has moved to dismiss Edward Berthiaume's misinterpretation claim against him.

Berthiaume's misrepresentation claim is deficient whether or not it is subject to [Fed. R. Civ. P. 9\(b\)](#). Berthiaume bases his misrepresentation claim on Kleinman's alleged statement that Berthiaume should continue to make mortgage, tax, and insurance payments for property Berthiaume owned at 26 Channel Lane in Goffstown, New Hampshire because Kleinman was "working a deal with the federal government to get out from under the government's forfeiture lien and secure the property for Berthiaume." Complaint, [Doc. No. 1-4](#) at ¶ 13. Berthiaume does not allege that this statement was false. Nor does he allege that Kleinman made the statement either negligently or with

knowledge of its falsity. A misrepresentation claim requires proof that the statement was false and that it was made either negligently or with knowledge of its falsity. Snierston v. Scruton, 145 N.H. 73, 77-78 (2000). Because Berthiaume has failed to plead essential elements of a misrepresentation claim, I agree with Kleinman that Berthiaume's claims against Kleinman must be dismissed.

Kleinman's motion to dismiss (Doc. No. 9) is granted.

SO ORDERED.

/s/Paul Barbadoro
Paul Barbadoro
United States District Judge

January 21, 2010

cc: Edward Berthiaume, pro se
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Beryl Cohen, pro se
Carolyn M. Kirby, Esq.